

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

--○○○--

In Re: )  
 ) Case No. 2:18-bk-10443-BR  
 )  
ECLIPSE BERRY FARMS, LLC, and ) Chapter 11  
HARVEST MOON STRAWBERRY, )  
 ) Los Angeles, California  
Debtors. )  
 ) Tuesday, August 21, 2018  
-----X 2:00 P.M.

HEARING RE: OBJECTION TO  
CLAIM 7 BY CLAIMANT GUSTAVO  
VEGA MORALES IN THE AMOUNT OF  
\$11,529.83

HEARING RE: OMNIGUS OBJECTION  
FOR ORDER DISALLOWING LATE-  
FILED CLAIMS

HEARING RE: OBJECTION FOR  
ORDER DISALLOWING CLAIMS

HEARING RE: OBJECTION TO  
CLAIM #16 BY CLAIMANT HAROLD  
CRAWFORD CO., INC./ARGO  
PARTNERS IN THE AMOUNT OF  
\$76,896.93

HEARING RE: OBJECTION CLAIM 3  
BY CLAIMANT PAULINA LOPEZ  
LOPEZ, IN THE AMOUNT OF  
\$7,701.50

HEARING RE: OBJECTION TO  
CLAIM 4 BY CLAIMANT ARACELI  
ZARAGOZA OSORIO IN THE AMOUNT  
OF \$7,817.01

Proceedings produced by electronic sound recording; transcript produced by transcription service.

1 HEARING RE: OBJECTION TO  
2 CLAIM 5 BY CLAIMANT CESAR  
3 ZARAGOZA OSORIO IN THE AMOUNT  
4 OF \$6,782.47

5 HEARING RE: OBJECTION TO  
6 CLAIM 6 BY CLAIMANT ROSAELIA  
7 LOPEZ LOPEZ IN THE AMOUNT OF  
8 \$24,172.52

9  
10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HONORABLE BARRY RUSSELL  
12 UNITED STATES BANKRUPTCY JUDGE  
13  
14

15 APPEARANCES:

16 For the Debtor: BARRY A. CHATZ, ESQ.  
17 Saul Ewing Arnstein & Lehr  
18 161 North Clark  
19 Suite #4200  
20 Chicago, Illinois 60601  
21  
22 For Harold Crawford: DAVID B. SHEMANO, ESQ.  
23 Shemano Law  
24 1801 Century Park East  
25 Suite #1600  
Los Angeles, California 90067  
26  
27 For the Wage Claimants: J. RAUL ALCANTAR, ESQ.  
28 Nassiri & Jung, LLP  
29 47 Kearney Street  
30 Suite #700  
31 San Francisco, California 94108  
32  
33 For the Official  
34 Committee of Unsecured  
35 Debtors: JOHN-PATRICK M. FRITZ, ESQ.  
36 Levene Neale Bender Yoo &  
37 Brill, LLP  
38 10250 Constellation Boulevard  
39 Suite #1700  
40 Los Angeles, California 90067  
41  
42  
43  
44  
45

1 Court Recorder: Wanda Toliver  
2 U.S. Bankruptcy Court  
3 Central District of California  
4 Edward R. Roybal Federal Building  
and Courthouse  
255 East Temple Street, Room #1639  
Los Angeles, California 90012  
(855) 460-9641

5 Court Transcriptionist: Ruth Ann Hager, C.E.T.\*\*D-641  
6 Ben Hyatt Certified Deposition  
Reporters  
7 17835 Ventura Boulevard, Suite 310  
Encino, California 91316

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page

4

1                   LOS ANGELES, CALIFORNIA, TUESDAY, AUGUST 21, 2018

2                   2:43 P.M.

3                   --oo--

4                   THE CLERK: #34.00 through #44.00, Eclipse Berry  
5 Farms.

6                   MR. CHATZ: Good afternoon, Your Honor. Barry  
7 Chatz for the debtors.

8                   MR. ALVANTAR: Good afternoon, Your Honor. Raul  
9 Alcantar for the wage claimants.

10                  THE COURT: Okay.

11                  MR. FRITZ: Good afternoon, Your Honor. JP  
12 Fritz, Levene, Neale, Bender, Yoo & Brill for the Official  
13 Committee of Unsecured Creditors.

14                  THE COURT: Okay.

15                  MR. SHEMANO: Good afternoon, Your Honor. David  
16 Shemano of Shemano Law on behalf of Harold Crawford  
17 Company, which is matter #39.00.

18                  THE COURT: All right. Okay.

19                  MR. CHATZ: Your Honor, we could do this by  
20 number or --

21                  THE COURT: It doesn't really matter. You know,  
22 it's almost happenstance. In fact, it is.

23                  MR. CHATZ: Yeah, it kind of is, so --

24                  THE COURT: Usually how they get set on the  
25 calendar is no bearing on anything other than they all

Page

18

1 MR. CHATZ: Yeah. You're welcome to stay.

2 THE COURT: -- but I think you probably have  
3 better things to do.

4 MR. ALVANTAR: Well, thank you, Your Honor.

5 THE COURT: Yes.

6 MR. CHATZ: Appreciate it.

7 THE COURT: Yes.

8 MR. CHATZ: We have #39.00.

9 THE COURT: All right.

10 MR. CHATZ: Which is the Harold Crawford fully  
11 briefed objection.

12 THE COURT: Right. And as Your Honor and I have  
13 discussed before, PACA is very specific. It needs to be  
14 followed strictly. We hired special counsel in this case  
15 because of its unique nature and this case specifically I  
16 don't think there's a dispute. There's no executed  
17 confirmation of any relationship --

18 THE COURT: I understand.

19 MR. CHATZ: -- so I don't know -- we'd ask that  
20 our objection be sustained.

21 THE COURT: All right.

22 MR. SHEMANO: Your Honor?

23 THE COURT: Yes.

24 MR. SHEMANO: I'd like to respond to an argument  
25 in the reply papers that we didn't --

Page

19

1 THE COURT: All right.

2 MR. SHEMANO: -- get the opportunity to respond  
3 to. I think there is -- and I will assume some  
4 responsibility for not identifying this confusion in our  
5 initial objection, but there's a fundamental confusion here  
6 about two separate parts of the regulation. And whether  
7 intentionally or unintentionally they're conflating two  
8 separate parts of the regulation. Now, I'd just like to  
9 explain it and I think it will hopefully help you  
10 adjudicate this dispute.

11 The regulation talks about the duty of the broker  
12 to prepare this confirmation memorandum after the parties  
13 reach their deal and that the confirmation memorandum is  
14 supposed to state who the broker was the broker for.

15 THE COURT: All right.

16 MR. SHEMANO: And then the regulation says if the  
17 confirmation or memorandum of sale does not contain such  
18 information the broker shall be presumed to engage by the  
19 buyer. And they're the seller; the other party is the  
20 buyer and that's where they say, well, you didn't do that  
21 so you're not the broker for us. Therefore, you lose.

22 And, Your Honor, I will concede that for purposes  
23 of this hearing and for purposes of this statute that  
24 Harold Crawford did not send a confirmation memorandum  
25 stating that they are the broker for the debtor and,

Page

20

1 therefore, the debtor is liable for the brokerage fee. I  
2 will concede that.

3 THE COURT: The debtor is not liable for --

4 MR. SHEMANO: Not liable as the broker because  
5 the statute says --

6 THE COURT: I understand.

7 MR. SHEMANO: -- the confirmation or memorandum  
8 of sale does not contain such information. Right? The  
9 broker shall be presumed to be engaged (phonetic) by the  
10 buyer.

11 THE COURT: Right.

12 MR. SHEMANO: And then it says -- this is the key  
13 provision that they did not highlight to you and I  
14 apologize, we did not highlight to you. It says:

15 "Unless otherwise agreed and confirmed, the  
16 broker will be entitled to payment of brokerage fees  
17 from the party by whom it was engaged to act as  
18 broker."

19 So their saying is, okay, you didn't comply  
20 with -- you didn't set a confirmation of memorandum rights,  
21 so that means you're presumed to be the broker for the  
22 buyer and therefore presumptively the buyer has to pay you,  
23 not us. I get that. But this regulation says, "unless  
24 otherwise agreed and confirmed."

25 So what the regulation says is, there's no

Page

21

1 statutory PACA requirement that the broker only be paid by  
2 the buyer or by the party who engaged --

3 THE COURT: But you have to put it --

4 MR. SHEMANO: -- the broker.

5 THE COURT: But you've got to put it in writing  
6 and who will be paid --

7 MR. SHEMANO: No, no, no, no. It only says you  
8 have to put -- if you want to say that you are the -- if  
9 you want to overcome the presumption -- there's a  
10 presumption that the buyer pays the brokerage fee.

11 THE COURT: Right.

12 MR. SHEMANO: Then there's a presumption that if  
13 you don't do a confirmation memorandum, the buyer -- you  
14 work for the buyer. So --

15 THE COURT: I understand.

16 MR. SHEMANO: There's a presumption. But then it  
17 says there's no requirement under PACA that the buyer pay  
18 the broker fee or even that the party who engaged the  
19 broker paid the broker fee. It's only a presumption unless  
20 otherwise agreed by the parties. That's what the  
21 regulation says.

22 THE COURT: All right.

23 MR. SHEMANO: So what we have here, Your Honor --  
24 and it's undisputed, all right. It's not a factual  
25 dispute. There's a factual dis -- there's a fact -- a fact

Page

22

1 that Harold Crawford is engaged by the buyer. Says, look,  
2 we have something, we want to sell it -- want to buy it.  
3 Go in the market, find somebody to sell it to us. That's  
4 all done by Harold Crawford. They do the service. And  
5 there's an understanding, which we describe as a course of  
6 dealing between the parties traditional in the industry  
7 that the parties know who's going to pay the fee. It's all  
8 done -- both documented as part of the transaction  
9 electronically. And at the conclusion of that they get an  
10 invoice saying, we're the broker. Part of the deal is you  
11 pay the per carton fee. And that's the way it was done,  
12 Your Honor, for over ten years without dispute.

13 This \$79,000 claim is just an add-on to over a  
14 million dollars of work in which Harold Crawford engaged as  
15 the broker in deals in which they're the seller. So  
16 they're making a hype -- they're not saying, we didn't --  
17 my client did not provide the brokerage service. They're  
18 not --

19 THE COURT: I understand that.

20 MR. SHEMANO: Right.

21 THE COURT: I've read all the papers. I reviewed  
22 them --

23 MR. SHEMANO: Right, right. But neither party  
24 highlighted that part of the regulation that said even if  
25 you do not comply with the confirmation matter (phonetic),

Page

23

1 so that means you are presumed to be the broker for the  
2 buyer and the buyer is presumed to be the party who's going  
3 to pay you. The parties can agree otherwise. And because  
4 of that --

5 THE COURT: You're saying by a course of conduct  
6 they agreed. Is that your argument?

7 MR. SHEMANO: Absolutely. By whom --

8 THE COURT: No, I understand.

9 MR. SHEMANO: Well, absolutely. There is no --  
10 we agreed. There is no writing over 15 years -- over 12  
11 years of conduct that said in advance, you're going to pay  
12 it. It's all done through the after-the-fact invoice.  
13 They've always paid it. We've always relied upon it.

14 THE COURT: I understand.

15 MR. SHEMANO: And if -- and -- so I'd point out,  
16 this (indiscernible) on the industry and if we rule -- if  
17 you rule that that's not good enough, I mean, really,  
18 really -- because then upset kind of a market course. This  
19 is how people do it. I just -- we have to get --  
20 clients -- time to get compensated from somebody and  
21 they -- their course of conduct said they agreed we're  
22 going to benefit from your service; they should pay it.

23 THE COURT: All right. Thank you. Well, you --  
24 that's what I understood your argument all along.

25 MR. SHEMANO: Yeah.

Page

24

1 THE COURT: What about that?

2 MR. CHATZ: We responded in our pleadings and the  
3 pleadings said you didn't evidence this, there's no --

4 THE COURT: But in all fairness --

5 MR. CHATZ: There's no con --

6 THE COURT: There's claim --

7 MR. CHATZ: There's no confirmation.

8 THE COURT: Wouldn't it be -- I mean, I  
9 understand that --

10 MR. CHATZ: This is post-CRO work. They know  
11 what the rules are.

12 THE COURT: Yeah, but CRO went down a long time  
13 ago. When did that one come into effect?

14 MR. CHATZ: In 2017.

15 THE COURT: What, the new statute?

16 MR. CHATZ: No, the package statutes were --

17 THE COURT: Oh, no, no, no. See --

18 MR. CHATZ: Package statutes were well before we  
19 were born.

20 THE COURT: The statute was amended, what, 20 or  
21 whatever --

22 MR. CHATZ: Yeah, exactly.

23 THE COURT: So you're talking about --

24 MR. CHATZ: I --

25 THE COURT: -- the CRO came in because of the --

Page

25

1 well, there was a death of -- to parties and I --

2 MR. CHATZ: Right.

3 THE COURT: The history of it.

4 MR. CHATZ: I don't think course of conduct is  
5 relevant --

6 THE COURT: Well --

7 MR. CHATZ: -- to the statute. The statute is  
8 rather specific.

9 THE COURT: But you did read --

10 MR. CHATZ: The cal --

11 THE COURT: Counsel just read the statute.

12 MR. CHATZ: Yeah, and the statute says --

13 THE COURT: Unless otherwise --

14 MR. CHATZ: -- unless otherwise agreed.

15 THE COURT: -- agreed. And he's arguing that  
16 the -- otherwise agreed by years of agreement that this is  
17 how it's going to work. I mean, that's basically the  
18 argument.

19 MR. CHATZ: But I don't think that you override  
20 the particular terms as Your Honor looked at it when we  
21 filed our response. He's re-arguing what he argued in his  
22 response. And the statute is rather clear; there do need  
23 to have a confirmation of sale. In order to collect --

24 THE COURT: And unless -- again, unless --

25 MR. CHATZ: In order to coll --

Page

26

1           THE COURT: Let me stop you. Unless as  
2 otherwise --

3           MR. CHATZ: They --

4           THE COURT: -- agreed by the parties.

5           MR. CHATZ: They filed a proof of claim under  
6 PACA. They did it -- if they had a different proof of  
7 claim they wished to file they could have done it.

8           THE COURT: Well, the claim is for fees. I'm not  
9 sure. Does it matter if it's under PACA?

10          MR. CHATZ: I -- PACA -- PACA is the specific  
11 statute.

12          THE COURT: The way I read it the claim -- and  
13 everybody knows, you know, what the claim is for.

14          MR. CHATZ: Excuse me. My --

15          THE COURT: Whether it's technically in the PACA  
16 or whatever, sure. I had some familiarity. Not nearly as  
17 much as you gentlemen, but over the years I have some  
18 familiarity how PACA works.

19          But don't you think that again from his  
20 standpoint the -- it's obvious. I'm not faulting anybody.  
21 I agree with the complaint -- the claim. Just so I  
22 understand the way it worked, here is this stepping back as  
23 I get to do as the judge of what's really going on here and  
24 say, well, something new. People coming in. I guess after  
25 the original people that set up the business died. To say

Page

27

1 the least, unfortunate. They now suddenly realize it was  
2 improper.

3 But the fact of the matter is that the -- that if  
4 you really wanted to change things wouldn't it be a good  
5 thing to change things before he went out and did the work?

6 MR. CHATZ: Your Honor, they always had a right  
7 to get paid by the seller. If you could give me one  
8 second, my client, the CRO, is here. He's a PACA expert  
9 here. We don't have our PACA lawyer here. If you wish to  
10 file the surreply, I wish he would have. Could you give me  
11 one second?

12 THE COURT: Well, no, let me stop you. This is  
13 not -- this is a hearing on -- this is a motion --  
14 objection on the facts of --

15 MR. CHATZ: Right. This is the facts. The facts  
16 are --

17 THE COURT: Yeah.

18 MR. CHATZ: -- in our view the statute is a bar  
19 to their claim.

20 THE COURT: Okay. Well, I disagree. Again, and  
21 so this is not -- you know, I am not faulting anybody. To  
22 say the least how this developed with the death of the  
23 people starting this wonderful business and so forth. But  
24 it appeared to be that, yes, I -- I agree with the claimant  
25 that -- that is an agreement, that is, a course of conduct

Page

28

1 over years. You can have a seat. There's not --

2 MR. CHATZ: Oh, no, that's fine.

3 THE COURT: -- a debate. But it does seem to me  
4 my -- I'm the only, again, neutral person here on this. It  
5 seems to me -- I understand the arguments and that -- but  
6 the fact of the matter is this is how things were done and  
7 if things were -- want to be changed, it should have been  
8 changed. Any notice to the claimant prior to doing the  
9 efforts would have done it. I'm not faulting anybody for  
10 not doing it. There's a lot more important things quite  
11 frankly going on in this case, namely selling all the  
12 berries and all the things. And so I understand. I'm not  
13 faulting anybody.

14 But I'm going to overrule the objection to the  
15 claim. I think the claim is --

16 MR. CHATZ: Okay. Thank you, Your Honor.

17 THE COURT: -- well taken. Interesting. I must  
18 admit it was an interesting case but I had already -- that  
19 was my leaning in any way before, so -- but I think that  
20 there was that implicit agreement, so that -- of all of  
21 them, this was the most interesting reading through all of  
22 this.

23 So anyway, it is -- it is what it is and so  
24 there's -- not going to take anymore testimony. That's the  
25 wonderful thing about doing this. The facts as I know are

Page

29

1 on the table and so that's what I'm going to do.

2 MR. CHATZ: I just wanted for clarification this  
3 is being treated as an unsecured claim.

4 THE COURT: Oh, yeah.

5 MR. CHATZ: Thank you.

6 THE COURT: Well, yes, yes. It's -- yes.

7 Remember this is not -- he hasn't -- he's -- right. The  
8 difference between selling berries and things and having a  
9 PACA claim, yes, this is -- yeah, I guess you understand  
10 that. That's obviously -- this is not a --

11 MR. SHEMANO: We understand that. We --

12 THE COURT: Yeah, this is a claim for its fees.

13 Right. It's not the -- it's not --

14 MR. SHEMANO: It's for a claim on the contract.

15 THE COURT: Right, right. On the contract, yes.

16 MR. CHATZ: All right. Thank you.

17 THE COURT: Yeah. Okay. I thought that was  
18 obvious, but nothing is --

19 MR. CHATZ: I just want to make sure it's clear.

20 THE COURT: Yeah. No, no, he's not claiming any  
21 security on the -- he does -- he has not provided  
22 perishable goods. Yeah.

23 So anyway, so that's going to be -- if you'll  
24 prepare that order --

25 MR. CHATZ: Yes.

Page

30

1           THE COURT: -- I've stated it on the record. I  
2 don't think you need --

3           MR. CHATZ: We'll prepare the order, Your Honor.

4           MR. SHEMANO: We'll work on it together.

5           THE COURT: I think -- I mean, it isn't that I  
6 don't trust you, but I -- you can work it out, but it's  
7 very simple. You don't have to state -- oh, you can state  
8 it on the record I've stated the reasons on the record --

9           MR. CHATZ: Right.

10          THE COURT: -- and the claim is allowed. Your  
11 objection is overruled. That's a one-liner. I can do  
12 it --

13          MR. CHATZ: No, I don't want you to have to do  
14 that. There's a question, though, with respect to fees and  
15 interest on this claim --

16          THE COURT: I wasn't even focusing on that. It  
17 was just the amount of the claim.

18          MR. CHATZ: Right. And if it's just the amount  
19 of the claim --

20          THE COURT: That's all I'm talking about. Wasn't  
21 that --

22          MR. CHATZ: -- we're filing (indiscernible)  
23 penalties and interest --

24          THE COURT: -- it?

25          MR. SHEMANO: No, there's a small portion of the

Page

31

1 claim amount that includes interest because the claim has  
2 not been paid.

3 THE COURT: Right, right. And --

4 MR. SHEMANO: Well, not --

5 THE COURT: Prepetition interest.

6 THE COURT: Yeah, prepetition interest. Right.

7 That would be entitled.

8 MR. SHEMANO: And there's a claim for a few  
9 thousand dollars of attorney's fees dealing with the claim  
10 and that's --

11 THE COURT: Well, that -- that is a little bit --  
12 I've forgotten about that. Since there's no contract I  
13 don't see being entitled to attorney's fees.

14 MR. SHEMANO: Well, there is an argument under  
15 PACA. I think what we'll do, Your Honor --

16 THE COURT: Well, I can tell you without -- I  
17 would not allow the attorney's fees. The interest is what  
18 it is and -- on the debt basically. I'll leave it at that.

19 MR. SHEMANO: Okay, Your Honor. We'll --

20 THE COURT: Because I'd rather -- I want to get  
21 it done today.

22 MR. SHEMANO: Understood.

23 THE COURT: I don't want --

24 MR. SHEMANO: We'll solve this.

25 THE COURT: Okay.

Page

32

1 MR. CHATZ: Thank you, Your Honor.

2 THE COURT: Okay. Thank you very much.

3 MR. CHATZ: Okay. Back to claim #35.00, Your  
4 Honor.

5 THE COURT: Okay.

6 MR. CHATZ: Two of the matters were resolved --  
7 actually three now have been resolved: Gregorio Martinez,  
8 BNSF and Vegetable Growers. As to the others we'd like to  
9 submit a draft order disallowing all of them because  
10 they've done --

11 THE COURT: All right. Right. Because I thought  
12 we had already --

13 MR. CHATZ: -- respond --

14 THE COURT: -- the only one I had a question  
15 about was the one -- the late filed claim --

16 MR. CHATZ: Right.

17 THE COURT: -- that yes, absolutely.

18 MR. CHATZ: Thank you. As to claim #36.00,  
19 Travelers where they filed an unliquidated claim in  
20 multiple -- in all three of the cases --

21 THE COURT: Right.

22 MR. SHEMANO: -- we're going to with Your Honor's  
23 permission file a draft order disallowing all those claims.

24 THE COURT: All right. Yes.

25 MR. CHATZ: We've not received a response on that

Page

36

1 THE COURT: And quickly as well.

2 MR. CHATZ: -- on October 3rd on the  
3 confirmation.

4 THE COURT: Yes.

5 MR. CHATZ: Thank you.

6 THE COURT: Thank you very much.

7 (End at 3:14 p.m.)

8 \* \* \* \* \*

9 I certify that the foregoing is a correct  
10 transcript from the electronic sound recording of the  
11 proceedings in the above-entitled matter.

12  
13 

14 Date: 8/31/2018

15 RUTH ANN HAGER, C.E.T.\*\*D-641

16  
17  
18  
19  
20  
21  
22  
23  
24  
25